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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,485	06/15/2001	Jay H. Connelly	042390P11866	8135

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EXAMINER
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VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
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2424

MAIL DATE	DELIVERY MODE
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12/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/882,485	<b>Applicant(s)</b> CONNELLY, JAY H.	
	<b>Examiner</b> MICHAEL VAN HANDEL	<b>Art Unit</b> 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 104-138 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 104-138 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/06/2008 has been entered.

### ***Response to Amendment***

1. This action is responsive to an Amendment filed 10/06/2008. Claims **104-138** are pending. Claims **1-103** are canceled. Claims **104-138** are new.

### ***Response to Arguments***

1. Applicant's arguments regarding claims **104, 114, 121, 125, 130, 132, and 135**, filed 10/06/2008, have been fully considered, but they are not persuasive.

Regarding claims **104, 114, 121, 125, 130, and 135**, the applicant argues that Payton does not disclose a multi stage approach. The examiner respectfully disagrees. The applicant specifically argues that, while the system of Payton receives feedback, the selections are made in a single cycle of send and receive.

Payton discloses a digital information system for delivering virtual on-demand information over digital transport systems by offloading a portion of the system's peak

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bandwidth requirements to local subscribers. A local collaborative filtering system synthesizes the preferences of all of the subscribers and then predicts those items that each subscriber might like, and therefore request. Each subscriber is provided with a local storage device for storing, during off-peak hours, those items recommended by the collaborative filtering system (see Abstract).

Payton further discloses synthesizing subscriber profiles to predict which of the available items each subscriber may be interested in or may request, and produces a list of recommended items for each subscriber (col. 5, l. 12-16). A scheduling processor 46 merges the lists 44 of recommended items to prioritize the items 36 from the most to the least frequently recommended and places identifiers for these items in a refresh queue 47 for broadcast over digital transport system 26. When the recommended items reach the top of the refresh queue 47, they are retrieved from repository 34 and are broadcast to the local users during off-peak viewing hours (col. 5, l. 21-29). Each local server 28 includes a predictive filter 54 that downloads those items 36 that are on the subscriber's list of recommended items and not already stored on a local storage 56 (col. 6, l. 1-5). A subscriber then requests an item from a menu of available items, uses the recommended item, and rates the item either manually or by way of viewing habit monitoring. This information is stored in a subscriber profile (col. 6, l. 26-31, 36-50). Once a day the subscriber profile is transmitted back to the server and used to generate the next iteration of recommended items (col. 5, l. 6-20; col. 7, l. 8-9, 61-67; & col. 8, l. 1-10). As such, the examiner interprets Payton as providing a multi stage approach, since each iteration of recommended and broadcast items is based on the previous iterations.

Further regarding claims **104, 114, 121, 125, 130, and 135**, the applicant argues that Payton does not include a portion of the corresponding content with the content descriptors. The examiner respectfully disagrees. Payton discloses transmitting a content identifiers and video content (col. 4, l. 55-58; col. 5, l. 26-31; col. 6, l. 20-36, 63-67; & col. 7, l. 1-12). Applicant specifically argues that a portion of the content would be in the form of a clip, a short, or a trailer, as clarified in claim 2. The examiner notes; however, that claim 2 is cancelled. As such, the examiner interprets video content to be “full content” and “a portion of the corresponding content,” as currently claimed.

Regarding claim **132**, the applicant argues Payton does not disclose that the broadcasted data is selectively stored according to a demand table at the client. The applicant specifically argues that, in Payton, all of the transmitted data is stored, because the server determines what will and will not be stored. The examiner respectfully disagrees. Payton discloses transmitting a subscriber profile from the client to the server, where it is used to generate a list of recommended items for the client (col. 5, l. 12-16). The list of recommended items is then transmitted to the client and used by the predictive filter 54 to store broadcast items on the list of recommended items (col. 6, l. 1-5). The examiner interprets this as “selectively storing the full content according to the demand data table,” as currently claimed.

### ***Claim Objections***

1. Claims **104, 109, 114, 121, 125, 130, 135** are objected to, because of the following informalities:

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Referring to claims **104, 114, 121, 125, 130, and 135**, the examiner notes that the phrases “the corresponding content” and “the corresponding further content” lack antecedent basis. The examiner fails to find a previous recitation of “corresponding content” or “corresponding further content” in claims 104, 114, 121, 125, 130, or 135, and recommends that the phrases be changed to “corresponding content” and “corresponding further content,” respectively.

Referring to claim **109**, the examiner notes that the phrase “the feedback” lacks antecedent basis. The examiner fails to find a previous recitation of “feedback” in claims 109 or 104. The examiner recommends that the phrase be changed to “feedback.”

The examiner interprets the claims in the Office Action below as though the recommended changes have been made.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims **114, 135** are rejected under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter.

Referring to claims **114 and 135**, the claims are directed towards a machine-readable medium; however, the examiner notes that the specification defines that the medium can be a form of storage for data that may include software transmitted or received via modem or communications interface 213 (p. 11, lines 3-10 of Applicant’s specification). The examiner

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notes that a claim directed to a signal *per se* does not appear to be a process, machine, manufacture, or composition of matter. See **MPEP 2106.01** for guidance.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **104-115, 117-138** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton (of record).

Referring to claims **104, 114, and 121**, Payton discloses a method/machine-readable medium/system, comprising:

- broadcasting content descriptors to a client, the content descriptors including a portion of the corresponding content (col. 3, l. 1-17 & col. 5, l. 12-31);
- receiving demand data from the client in response to the content descriptors (col. 5, l. 7-12; col. 6, l. 9-11, 36-53; col. 7, l. 65-67; & col. 8, l. 1-3, 38-40, 50-58);
- broadcasting further content descriptors to the client in response to the demand data, the further content descriptors also including a portion of the corresponding further content (col. 3, l. 1-17; col. 5, l. 12-31; col. 8, l. 61-67; & col. 9, l. 1-14);
- receiving further demand data from the client in response to the further content descriptors (col. 5, l. 7-12 & col. 6, l. 9-11, 36-53; col. 7, l. 65-67; & col. 8, l. 1-3, 38-40, 50-58); and

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- broadcasting full content to the client corresponding to some of the further content descriptors in response to the further demand data for presentation on a client device (col. 3, l. 1-17; col. 5, l. 12-31; col. 8, l. 61-67; & col. 9, l. 1-14).

Further referring to claim **121**, Payton discloses a server coupled to a client, the server having a storage medium (col. 4, l. 55-58 & Fig. 2) and an integrated circuit 47 coupled via a bus including a multi-drop bus (the examiner notes that the scheduling processor and digital repository in the central distribution server are coupled via a multi-drop bus to the playback devices (col. 9, l. 61-67; col. 10, l. 1-20; & Fig. 8).

Referring to claims **105** and **117**, Payton discloses the method/medium of claims 104 and 114, respectively, wherein the content comprises video entertainment programming (col. 4, l. 55-58).

Referring to claims **106**, **118**, **122**, and **136**, Payton discloses the method/medium/system/medium of claims 104, 114, 121, and 135, respectively, further comprising receiving updated demand data indicating which full content has been stored by the client (col. 3, l. 9-12; col. 4, l. 14-17; & col. 6, l. 36-42).

Referring to claims **107**, **119**, **123**, and **137**, Payton discloses the method/medium/system/medium of claims 104, 114, 121, and 135, respectively, further comprising receiving updated demand data indicating which full content has been consumed by the client (col. 5, l. 7-10, 16-21 & col. 6, l. 36-50).

Referring to claims **108**, **120**, and **124**, Payton discloses the method/medium/system of claims 104, 114, and 121, respectively, further comprising prioritizing the content in response to



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the demand data received from the client and wherein broadcasting full content comprises broadcasting full content prioritized (col. 3, l. 12-15 & col. 5, l. 21-31).

Referring to claims **109** and **138**, Payton discloses the method/medium of claims 104 and 135, respectively, wherein feedback to the content descriptors is automatically generated transparent to the client based on an amount of content consumed by the client (col. 6, l. 44-50) and wherein the further demand data is generated manually by the client (col. 6, l. 36-40).

Referring to claim **110**, Payton discloses the method of claim 104, wherein receiving demand data comprises receiving a demand table, wherein the demand table is determined based on rankings of the content descriptors and existing content at a client (col. 6, l. 36-39; col. 8, l. 50-58; & Fig. 6).

Referring to claim **111**, Payton discloses the method of claim 104, wherein the content descriptors include metadata to describe the content (col. 3, l. 20-23 & col. 6, l. 26-36).

Referring to claim **112**, Payton discloses the method of claim 104, wherein the received further demand data includes feedback received from the client, the feedback including a demand indicating a level of desirability for the content (col. 3, l. 16-21; col. 6, l. 36-39; & Fig. 6).

Referring to claim **113**, Payton discloses the method of claim 104, further comprising broadcasting a content descriptor schedule signal to the client to indicate that a content descriptor file is to be broadcast at a specified broadcast time and wherein broadcasting content descriptors comprises broadcasting content descriptors at the specified broadcast time (col. 7, l. 8-9, 61-67 & col. 8, l. 1-36).

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Referring to claims **115** and **129**, Payton discloses the medium/apparatus of claims 114 and 125, respectively, wherein the demand data received from the client is received in a batch (col. 7, l. 61-67 & col. 8, l. 1-5).

Referring to claim **125**, Payton discloses an apparatus, comprising:

- a network including a first computer system 24 coupled to a second computer system 28 (Fig. 2), the first computer system 24 to perform operations, comprising:
  - broadcasting content descriptors to the second computer system, the content descriptors including a portion of the corresponding content (col. 3, l. 1-17 & col. 5, l. 12-31);
  - receiving demand data from the second computer system in response to the content descriptors (col. 5, l. 7-12; col. 6, l. 9-11, 36-53; col. 7, l. 65-67; & col. 8, l. 1-3, 38-40, 50-58);
  - broadcasting further content descriptors to the second computer system in response to the demand data, the further content descriptors also including a portion of the corresponding further content (col. 3, l. 1-17; col. 5, l. 12-31; col. 8, l. 61-67; & col. 9, l. 1-14);
  - receiving further demand data from the second computer system in response to the further content descriptors (col. 5, l. 7-12 & col. 6, l. 9-11, 36-53; col. 7, l. 65-67; & col. 8, l. 1-3, 38-40, 50-58); and
  - broadcasting full content to the second computer system corresponding to some of the further content descriptors in response to the further demand data

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for presentation on a device associated with the second computer system (col. 3, l. 1-17; col. 5, l. 12-31; col. 8, l. 61-67; & col. 9, l. 1-14);

- the second computer system 28 to perform operations, comprising:
  - o generating demand data transparent to the user of the second computer system in response to the received content descriptor to send to the first computer system (col. 6, l. 44-50);
  - o generating further demand data using manual user inputs in response to the received further content descriptor to send to the first computer system (col. 6, l. 36-40); and
  - o presenting the full content (col. 6, l. 20-22, 26-37).

Referring to claim **126**, Payton discloses the apparatus of claim 125, wherein the demand data is automatically generated transparent to a user of the second computer system based on the amount of content consumed by the second computer system (col. 6, l. 44-50).

Referring to claim **127**, Payton discloses the apparatus of claim 125, wherein the demand data comprises a demand table, wherein the demand table is determined based on rankings of prioritized content based on user interests and existing content at a client (col. 6, l. 36-39; col. 8, l. 50-58; & Fig. 6), wherein the demand table is created and updated at the second computer in response to filtering the prioritized content received from the first computer (col. 6, l. 1-5).

Referring to claim **128**, Payton discloses the apparatus of claim 125, wherein the first computer system comprises a server 24, and the second computer system comprises a client 28 (Fig. 2).

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Referring to claims **130** and **135**, Payton discloses a method/machine-readable medium, comprising:

- receiving content descriptors at a client from a broadcaster, the content descriptors including a portion of the corresponding content (col. 3, l. 1-17 & col. 5, l. 12-31;
- generating demand data at the client in response to the content descriptors and sending the demand data to the broadcaster (col. 5, l. 7-12; col. 6, l. 9-11, 36-53; col. 7, l. 65-67; & col. 8, l. 1-3, 38-40, 50-58);
- receiving further content descriptors at the client in response to the demand data, the further content descriptors also including a portion of the corresponding further content (col. 3, l. 1-17; col. 5, l. 12-31; col. 8, l. 61-67; & col. 9, l. 1-14);
- generating further demand data at the client in response to the further content descriptors and sending the further demand data to the broadcaster (col. 5, l. 7-12 & col. 6, l. 9-11, 36-53; col. 7, l. 65-67; & col. 8, l. 1-3, 38-40, 50-58); and
- receiving full content at the client corresponding to some of the further content descriptors in response to the further demand data for presentation on a client device (col. 3, l. 1-17; col. 5, l. 12-31; col. 8, l. 61-67; & col. 9, l. 1-14).

Referring to claim **131**, Payton discloses the method of claim 130, further comprising maintaining a demand data table at the client, updating the demand data table as content is consumed, and wherein generating demand data comprises using the demand data table (col. 6, l. 36-50).

Referring to claim **132**, Payton discloses the method of claim 131, further comprising selectively storing the full content according to the demand table (the examiner notes that content

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is stored based on the list of recommended items at the predictive filter and that the list of recommended items is generated based on the subscriber profile)(col. 6, l. 1-7).

Referring to claim **133**, Payton discloses the method of claim 131, wherein the demand table is created and updated at the client in response to filtering content based on interests of a current user at the client, user behavior of a previous user at the client, and content consumption at the client (col. 6, l. 1-5, 36-39; col. 8, l. 50-58; col. 9, l. 62-67; col. 10, l. 1-20; & Fig. 6).

Referring to claim **134**, Payton discloses the method of claim 131, wherein sending the demand data comprises sending the demand table in response to a signal received at the client from the broadcaster (col. 7, l. 61-67 & col. 8, l. 1-5).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim **116** is rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claim **116**, Payton discloses the medium of claim 114. Payton further discloses that subscriber profiles are communicated between the central distribution server and the subscribers over a low bandwidth back channel (col. 3, l. 2-6 & col. 6, l. 51-58). Payton still further discloses that the local server 28 sends new subscriber profile data in response to a periodic trigger (col. 7, l. 65-67 & col. 8, l. 1-4). Payton does not disclose that the demand data received from the client is received staggered, wherein the staggering is based on a last time the

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client sent feedback to the server. Applicant's failure to adequately traverse the examiner's taking of Official Notice (that it is well-known within the prior art to stagger the sending of information across a network to minimize network congestion) in the last Office Action is taken as an admission of the fact(s) noticed. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton's method of periodically sending subscriber profile data across a low bandwidth back channel to include staggering the sending of information, such as that taught by the prior art in order to minimize network congestion.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL VAN HANDEL whose telephone number is (571)272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/  
Supervisory Patent Examiner, Art Unit  
2424

MVH